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September 30, 2011

Letter of Appeal Federal Communications Commission Office of the Secretary 9300 East Hampton Drive Capitol Heights, MD 20743

Re: Appeal of USAC Appeal Denial CC Docket No. 02-6 & 96-45

Billed Entity Name: Lake County ESD Form 470 App #: 446270000575869

Form 471 App #: 522654 Billed Entity #: 198617

## To whom it may concern:

This letter is a Request for Review of the Universal Service Administrative Company's (USAC) denial of our appeal of two Notification of Commitment Adjustment letters dated April 5<sup>th</sup>, 2011.

## Background:

Lake County Education Service District (Lake County ESD) filed a Form 470 in February, 2006 requesting bids for two separate services: Internet Access and Internet Service via T-1 lines. These are services the Lake County ESD provides to the five school districts in Lake County. The Lake County ESD Business Manager completed the Form 470 independent of the influence of any service providers and listed herself as the contact person for questions on the Form 470. However, she also listed Rod Bennett, our network administrator/I.T. person, as the contact in Box 12 Optional Information. Rod Bennett is also listed as a contact person for Eastern Oregon Technology, who we subsequently selected as our vendor for these services.

USAC determined that listing this individual on our Form 470 was a violation of the competitive bidding rules because of his affiliation with Eastern Oregon Technology.

#### Introduction:

The Lake County ESD is appealing the determination of a tainted competitive bidding process based on several factors. We believe these factors to show evidence that the Lake County ESD did not select Eastern Oregon Technology as a vendor due to bias, but out of necessity. Also, these factors will show that there was no waste, fraud or abuse, misuse of funds, or intentional failure to adhere to program rules. The listing of the inappropriate contact information was an inadvertent mistake made in the rush

to meet the deadlines of the E-Rate program while meeting the many other demands of the Business Manager's job.

## Factors:

# 1. Availability of Service

Lake County is a very rural county with an approximate ratio of 1:1 for population to square miles (about 7,900 people spread throughout its 8,135 square miles). In addition to being the county seat and location of the Lake County ESD, Lakeview is the largest town in the county with approximately 2,500 people. The nearest larger city (and WalMart, for that matter) in Oregon is 96 miles away. At the time this Form 470 was filed (February, 2006), the only internet service provider offering internet capacity larger than 56 mbps for Lake County was Qwest. However, due to statewide contract opportunities, schools don't generally purchase these services directly from Qwest. Instead, we typically contract with the Oregon Dept. of Administrative Services (DAS) to get more competitive pricing on the Qwest T-1 lines.

Neither Qwest nor DAS submitted a bid on our Form 470. Eastern Oregon Technology placed a bid to provide internet service via T-1 lines through DAS, basically as a flow through entity, along with their bid to provide us with connectivity to the internet. They did not add a mark-up on the T-1 lines provided through DAS, and did not gain from providing that service to us. Selecting Eastern Oregon Technology rather than going directly through DAS was a decision made by Lake County ESD based on convenience as the DAS invoices are difficult to decipher and it can be hard to get discounts to show directly on the invoice (as we needed) rather than having to go through the reimbursement method. Eastern Oregon Technology was willing to put the E-Rate discount directly on our invoice. In the past we have had trouble getting DAS to put the E-rate discount on our initial invoice.

The demographics of our area severely limit the number of interested service providers and the services requested through our Form 470 were not readily available in our area at that time through any other vendors. A map of Oregon has been included to illustrate our isolated location.

## 2. Competitive Bidding

USAC has determined that Eastern Oregon Technology received an unfair advantage over other vendors in bidding on these services with the Lake County ESD. In order to have an advantage over other service providers, however, there must **be** other providers. The idea that there would be multiple proposals submitted is the entire point of going through the bidding process; however, due to the level of services needed and the geographical isolation and remoteness of our area, there was only one vendor to submit a bid. This vendor was Eastern Oregon Technology. We selected Eastern Oregon Technology for these services because they were the <u>lone bidder</u> in this process.

The competitive bidding process was not tainted by the listing of Rod Bennett's contact information because there was no competition.

#### 3. ESD Partnerships & Enterprise Services

It is important to note that Eastern Oregon Technology is not a for profit business. Eastern Oregon Technology is a public entity run by the Education Service District in a neighboring county (Harney County). The budget for Eastern Oregon Technology is included in Harney ESD's main budget document. When Harney ESD goes through their annual audit, Eastern Oregon Technology undergoes the same scrutiny as any public entity. Rod Bennett is employed by and included on payroll for Harney ESD, not Eastern Oregon Technology's payroll.

Due to our association with Harney ESD and collaborating with them to provide the best

possible educational experience to the students in both our counties, we often don't view services we receive through Harney ESD as "purchased services" or Harney ESD as a "service provider". In many cases, we have swapped professional development offerings for our teachers between the ESDs, not charging for the services, or have written grants as a consortium in order to bring the most benefit to our area.

It is likely that when Rod Bennett was listed as a contact, it didn't even occur to the Business Manager in her rush to complete the form that Rod Bennett was also a part of Eastern Oregon Technology, rather than just being a Harney ESD employee.

# 4. Contact Information

USAC's denial of our appeal was based on the fact that we did not show their determination that vendor contact information was listed on the Form 470 to be incorrect. We are unable to show this determination to be incorrect because it is true that contact information for Rod Bennett, Eastern Oregon Technology representative, was listed on our Form 470. We are not disputing that. What we are disputing is the assumption that this listing provided Eastern Oregon Technology an advantage over other vendors. Only one vendor submitted a bid, but not due to any intentional failure to adhere to program rules or circumvent the fair and open nature of the bidding process.

Our official contact person for the Form 470, listed in Box 6, was Vickie Bremont, the Business Manager at that time. She was the primary contact for any questions relating to this Form 470. Rod Bennett, Eastern Oregon Technology representative, was listed in Box 12, which reads: "(Optional) Please list the person on your staff or project who can provide additional technical details or answer specific questions from service providers about the services you are seeking. This need not be the contact person listed in Item 6 nor the Authorized Person who signs this form." Rod Bennett was our network administrator and all around I.T. person at the time, making him the only person able to answer such questions and the natural contact person to list. He was not the person responsible for collecting bids or informing other vendors of the services needed. To my understanding, the role of the individual listed in Box 12 is strictly to provide details on the current technology, and to ensure the compatibility of proposed solutions to service needs.

Listing Rod Bennett was intended to be supplemental information to help the bidding process. He was not the only contact listed on our Form 470 and was definitely not intended to be the "gate-keeper" of information or hinder the bidding process in any way.

Rod Bennett is not authorized to make any kind of decision for Lake County ESD, for E-Rate purposes or any other purpose, nor is he allowed to be involved in selecting a service provider at any level or in any way.

## 5. Oops Factor

Any individual who has dealt with the E-Rate process for any length of time knows that it is against the rules to list vendor information anywhere on the Form 470. Vickie Bremont had been filing E-Rate forms for approximately five years and likely knew the rules regarding this issue. Had it occurred to her that Rod Bennett had dual roles — one as our network person and another as a service provider — she never would have listed him as a contact; not even for supplemental information. It is most probable that she had a multitude of deadlines to meet and tasks to accomplish at the time she completed this form. In her hurry to get it done, she was probably just putting in whatever information the form asked for, including the person on our project who could provide additional technical details. Lake County ESD did not, and still does not, have anyone on-site who deals with technical issues. If any arise, local office staff troubleshoot to the best of our ability before contacting technical support.

Eastern Oregon Technology continues to provide technical support to the Lake County ESD, and Rod Bennett and his staff is our primary contact.

Listing Rod Bennett on the Form 470 was a simple mistake – an oversight – and has not been repeated since the February, 2006 Form 470.

### 6. No Harm, No Foul

Our final point in this argument has been the overriding theme in each point: listing Rod Bennett on our Form 470 was a mistake, but it did not impact the competitive bidding process in any way. The Lake County ESD did not spend more money on technology services by selecting Eastern Oregon Technology as a service provider. No provider was turned away or overlooked due to a bias toward Eastern Oregon Technology. No party benefitted personally from the selection of Eastern Oregon Technology. All program rules, with this one minor exception, have been followed. Our adherence to program rules has been clearly demonstrated by the fact that we underwent a full audit by USAC in 2007 and had no findings against us.

Listing Rod Bennett's contact information did not change the competitive bidding process and is no indication of waste, fraud or abuse, misuse of funds, or an intentional failure to adhere to program rules or circumvent the fair and open nature of the bidding process.

#### Conclusion:

The Lake County ESD is the type of entity the E-Rate program is intended to help. We are located in a very remote area with a 2006 countywide student poverty rate of 51%. Our E-Rate discount level of 75% with limited access to higher capacity internet is critical in our ability to provide services to the five school districts in Lake County. We could not afford to provide these services to the school districts of our county without the discounts this program offers. The amount USAC is attempting to recover from Lake County ESD (approximately \$45,000) constitutes nearly 4% of our entire general fund budget of \$1,174,210. Repaying the amount in question would be a reasonable expectation had we intentionally violated the program rules; however, this was not the case. Further, during this time of declining resource availability for public schools, this amount of repayment will create undue hardship on our current and future financial health. This hardship will ultimately result in diminishing service provided to the school districts and students of our county. We believe the arguments stated above prove that this was a technical error and not any effort on our part to taint or bias the E-Rate competitive bidding process.

Thank you for your time and consideration in this matter.

Sara Sarensen

Lake County ESD

**Business Manager** 

357 North L Street

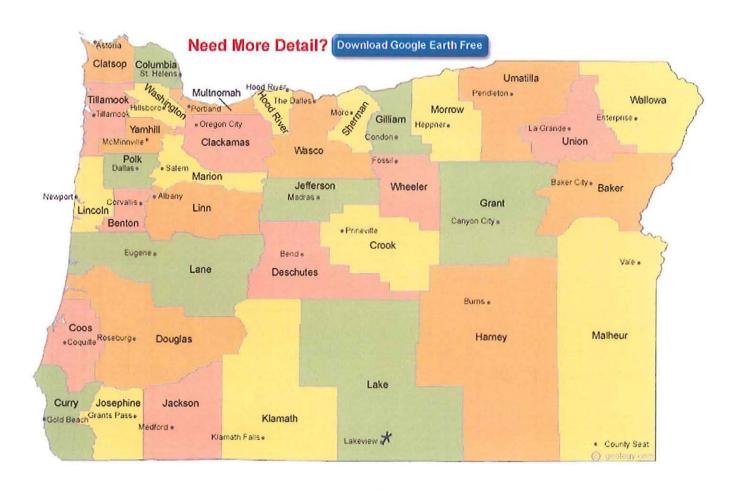
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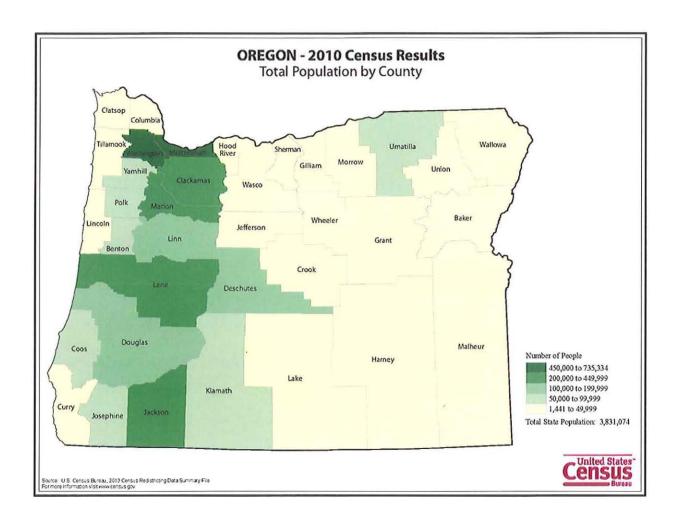
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Jana Janusen



Town	Distance to Lakeview
Bend (83,125 pop.)	174 miles
Burns (3,015 pop.)	139 miles
Klamath Falls (21,480 pop.)	96 miles

Lakeview - 2,685 (population)





# Universal Service Administrative Company

Schools & Libraries Division

# Administrator's Decision on Appeal – Funding Year 2006-2007

September 01, 2011

Sara Sarensen Lake County Education Service District 357 North L Street Lakeview, OR 97630

LAKE COUNTY EDUCATION SERVICE Re: Applicant Name:

DISTRICT

Billed Entity Number: 198617 Form 471 Application Number: 522654

Funding Request Number(s): 1438733, 1438811 Your Correspondence Dated: June 02, 2011

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2006 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1438733, 1438811 Decision on Appeal: Denied

Explanation:

USAC has determined that the funding commitment must be rescinded in full for the above funding requests. During the course of a review it was determined that the service provider contact information appeared on the cited Form 470. The contact person on the cited Form 470 (Application Number: 446270000575869) was Rod Bennett. Rod Bennett is a representative for Eastern Oregon Technology. Eastern Oregon Technology was selected as a service provider pursuant to the posting of this Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. If the applicant has posted a Form 470 that contains contact information for a service provider that participates in the competitive bidding process, the applicant has violated this requirement, and FCC rules consider this Form

470 to be tainted. All Funding Requests that relate to this Form 470 are required to be denied because the Form 470 is tainted. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds. USAC has determined that both the applicant and the service provider are responsible for this rule violation; if any funds were disbursed, USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider. In your appeal, you have not shown that USAC's determination was incorrect. Consequently, USAC denies your appeal.

FCC Rules require applicants to seek competitive bids, and in selecting a service provider to carefully consider all bids. 47 C.F.R. secs. 54.504(a), 54.511(a). FCC Rules further require applicants to comply with all applicable state and local competitive bidding requirements. 47 C.F.R. sec. 54.504(a). In the May 23, 2000 MasterMind Internet Services, Inc. (MasterMind) appeal decision, the FCC upheld USAC's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470, and MasterMind participated in the competitive bidding process initiated by the FCC Form 470. See Request for Review by Mastermind Internet Services, Inc, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 4028, 4032, FCC 00-167 para. 9 (rel. May 23, 2000). The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied. Id. Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone, fax numbers, and e-mail address. Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment and preventing an unfair competitive advantage. See, e.g., 48 C.F.R. sec. 9.505(a), (b). A competitive bidding violation and conflict of interest exist when an applicant's consultant, who is involved in determining the products and/or services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with the service provider that was selected.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division